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LITERARY PROPERTY AT COMMON LAW. — It was declared long since, in the leading cases of Donaldson *v.* Beckett[1] in England and Wheaton *v.* Peters[2] in America, that the copyright statutes secure to the producer of such literary property as is the subject of copyright, the only right of exclusive publication that exists after first publication. This has been uniformly reasserted; and, conversely, it is held that until such first publication an exclusive right does exist.[3] But what the cases mean by a publication is difficult to determine from the authorities. A schoolroom lecture,[4] or a private circulation of a book or design,[5] is not treated as a publication, as to republish under the circumstances is considered a breach of faith. Nor are public representations of dramas or public lectures publications.[6] Whether or not the exhibition of a painting in a public gallery is so is a doubtful question. The American cases seem to hold that it is.[7] Similarly a recent New York case holds that the filing of an architect's plans with the city building department is a publication. *Wright* v. *Eisle*, 83 N. Y. Supp. 888. An unrestricted distribution of a book, even though under the express condition that the distributees shall use it for reference only, is without doubt a publication.[8] These examples amply demonstrate that

[1] 2 Bro. P. C. 129.
[2] 8 Pet. (U. S.) 591.
[3] Palmer *v.* De Wit, 40 How. Pr. (N. Y.) 293; affirmed in 47 N. Y. 532.
[4] Caird *v.* Sime, 12 App. Cas. 326.
[5] Prince Albert *v.* Strange, 2 De G. & S. 652.
[6] Tompkins *v.* Halleck, 133 Mass. 32.
[7] Pierce, etc., Co. *v.* Werckmeister, 72 Fed. Rep. 54.
[8] Rees *v.* Peltzer, 75 Ill. 475.

publication in any ordinary sense is not the test. Long-continued public renditions of a drama or lecture may in fact publish it far more extensively than its sale as a book. What is really a confusion is the result of a flexible construction of the word "publication," amounting practically in some instances to the total abrogation of its meaning. This flexibility of construction is believed to be due to an inclination to circumvent as much as possible the original interpretation of the copyright statutes.

The result of this analysis has an important bearing on the much disputed question whether at common law as unaffected by statute there exists an exclusive right of publication in perpetuity. Intrinsically there might be. A man's ideas are his own until he imparts them to others, but then unquestionably they become irredeemably shared by the recipients. Yet the law, while recognizing that the ideas are no longer the author's alone, could nevertheless recognize a reservation by the author of the exclusive right of publication, and restrain any inconsistent use of those ideas. Whether it should refuse to restrain such a use is a question of policy, just as the law, for reasons of policy, refuses to enforce certain conditions attempted to be imposed on the alienation of tangible property. That the law does recognize and enforce such a condition to a limited extent in all cases of literary property seems clear from the authorities. The courts, while purporting to deny the common law right on account of the statute, by their varying construction of the word "publication," have in fact recognized its complete existence in certain cases. That there is such a common law right is further supported by a modern class of cases which hold that the most extensive publication of news by machines known as "tickers" does not destroy the exclusive rights of the original owner.[9] As ordinary news is not the subject of copyright, these cases must depend on common law principles. They are clearly right on policy. If a receiver of such news were allowed to republish by "tickers" of his own, it would be destructive to the continuance of this highly valuable mode of disseminating news, since the first company could not compete with rivals whom it supplied with information. It must be remembered that the copyright statutes themselves are a legislative recognition of the justice of the right of exclusive publication for a considerable period of time. Upon the whole, therefore, whatever the true effect of the copyright statutes, those cases seem sound which recognize a common law right of exclusive republication.

DOWER IN MORTGAGED LAND REDEEMED AND SOLD BY EXECUTOR FOR PAYMENT OF DEBTS. — By express statute in England, and by statutory enactment or judicial decision in most American jurisdictions, dower is allowed in an equity of redemption. Another common statute, enacted for the benefit of creditors, allows the court to order the executor to sell the testator's realty, if necessary, for the payment of his debts. By the weight of American authority, in some states regulated by statute, the mortgagee must realize first on his security, and then prove against the personal estate only for the excess of the mortgage debt over the value of the security.[1] Consistently with this rule of fairness to the general creditors, it has been

[9] National, etc., Co. *v.* Western, etc., Co., 119 Fed. Rep. 294; Kiernan *v.* Manhattan, etc., Co., 50 How. Pr. (N. Y.) 194.

[1] See Woerner, Administration, 2d ed., § 408.